

INTRODUCTION

- [1] The applicable legislation is the *Residential Tenancy Act* (the “Act”).
- [2] On August 15, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application seeks to retain a portion of the Tenant’s security deposit for repairing and painting wall damage. A copy was emailed to the Tenant on the August 14, 2024.
- [3] On September 5, 2024, a notice of teleconference hearing was emailed to the parties.
- [4] On September 23, 2024, an evidence package was emailed to the parties.
- [5] On September 24, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). A Landlord representative (the “Representative”) and the Tenant participated in the hearing.

ISSUE

- i. Is the Landlord entitled to retain a portion of the security deposit?

SUMMARY OF EVIDENCE

- [6] On August 12, 2022, the parties entered into a written fixed-term tenancy agreement for the for the Rental Unit, for the period of August 1, 2022, to July 31, 2023. The tenancy agreement then continued as a month-to-month agreement. Rent was \$1,545.00 due on the first day of the month. A security deposit of \$1,500.00 was paid on August 12, 2022. The Tenant vacated the Rental Unit on July 31, 2024, by mutual agreement, and the tenancy ended.

The Representative’s evidence is summarized as follows.

- [7] The Representative cannot attest to the state of the Rental Unit when the Tenant moved in, as another property management company was looking after the Rental Unit at that time. When the Tenant vacated the Rental Unit, the Tenant tried to patch some holes in the walls, but it was inadequate. The Rental Unit had to be properly patched and painted before the next tenant moved in.
- [8] The cost of the repairs and painting was \$1,302.05 and the Landlord is seeking to retain this amount from the security deposit. A copy of the repair invoice, move out photographs of the Rental Unit, and a move-out inspection report of the Rental Unit were submitted into evidence. The inspection report noted that the Rental Unit was not painted before the Tenant moved in.

The Tenant’s evidence is summarized as follows.

- [9] There were holes and damage to the walls of the Rental Unit when the Tenant moved in. The previous property manager told the Tenant that she was only required to repair any holes that she made. The Landlord was going to paint the Rental Unit after the Tenant vacated. The Tenant installed a shelf and a tv stand and this was approved by the previous property manager.
- [10] Before the Tenant vacated she patched the areas where the shelf and tv stand were. The Tenant also patched all the other damages in the Rental Unit that were pre-existing when she moved in. The previous tenant also did some patch work but it was poorly done. There was some damage to the wall caused by her bed, but this would be considered wear and tear. The Tenant submitted into evidence move-in and move-out photographs of the Rental Unit.

ANALYSIS

Issue i. Is Landlord entitled to retain a portion of the security deposit?

- [11] The Landlord commenced the Application pursuant to the Act. The Landlord has the burden of proving its claim by the civil standard of proof, which is on a balance of probabilities. This means that a decision-maker must be satisfied there is sufficiently clear and convincing evidence to support the Landlord's claim.
- [12] The Officer finds that the Landlord has not provided sufficient evidence to establish that it can retain any of the security deposit. The Landlord has not established that any of the alleged damage to the Rental Unit was either caused by the Tenant or was beyond reasonable wear and tear.
- [13] The Tenant submitted move-in photographs into evidence showing pre-existing damage and patches on walls. The Tenant stated there was other damage and patching which cannot be seen in the photos. The Tenant acknowledged that she installed a tv stand and shelf but she had been given permission for the installation and repaired the holes. The inspection report stated that the Rental Unit had not been painted before the Tenant moved in, which is consistent with the move-in photographs.
- [14] The Representative is unable to attest to the condition of the Rental Unit prior to the Tenant moving in. The Landlord did not have any move-in photos or move-in inspection reports prior to the start of the tenancy. The best evidence a landlord can provide for these types of disputes is "before" and "after" photographs and inspection reports to assist in establishing a baseline condition of the Rental Unit at the beginning of the tenancy.

CONCLUSION

- [15] The Application denied.
- [16] The Landlord shall return the security deposit plus interest in the amount of \$1,562.40.

IT IS THEREFORE ORDERED THAT

- I. The Landlord shall return the security deposit plus interest in the amount of \$1,562.40 by October 15, 2024.

DATED at Charlottetown, Prince Edward Island, this 26th day of September, 2024.

(sgd.) Mitchell King

Mitchell King
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.